

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RONNIE JONES, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	NO. 05-11832-GAO
CITY OF BOSTON, ET AL.,)	
)	
Defendants.)	
)	
)	
)	

**DECLARATION OF ERIC HEINING
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Eric Heining, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I am an attorney licensed to practice in the Courts of the Commonwealth of Massachusetts and in this Court.
2. I am associated with Bingham McCutchen LLP, which is counsel to the Plaintiffs in connection with the above-captioned litigation (the "Action").
3. I make this declaration in support of the Plaintiffs' November 7, 2011 opposition to Defendants' motion for summary judgment (the "Opposition").
4. I make this declaration based on my personal knowledge of the relevant facts and my review of the relevant documents.
5. Annexed hereto as exhibit O-1 collectively are excerpts from a true and correct copy of the transcript of a deposition of Paul F. Evans dated November 13, 2003.
6. Annexed hereto as exhibit O-2 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Beckers dated June 10, 2002.

7. Annexed hereto as exhibit O-3 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Beckers dated December 9, 2010.

8. Annexed hereto as exhibit O-4 collectively are excerpts from a true and correct copy of the transcript of a Dept. of Employment and Training hearing regarding Plaintiff Beckers dated November 25, 2002.

9. Annexed hereto as exhibit O-5 collectively are excerpts from a true and correct copy of the transcript of a Department of Employment and Training hearing regarding Plaintiff Beckers dated December 23, 2002.

10. Annexed hereto as exhibit O-6 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Bridgeforth dated July 18, 2003.

11. Annexed hereto as exhibit O-7 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Bridgeforth dated December 10, 2010.

12. Annexed hereto as exhibit O-8 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Bristow dated September 29, 2010.

13. Annexed hereto as exhibit O-9 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Couch dated September 17, 2007.

14. Annexed hereto as exhibit O-10 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Couch dated September 13, 2010.

15. Annexed hereto as exhibit O-11 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Downing dated September 29, 2003.

16. Annexed hereto as exhibit O-12 collectively are excerpts from a true and correct copy of the transcript of an Unemployment Hearing regarding Plaintiff Downing dated June 9, 2004.

17. Annexed hereto as exhibit O-13 collectively are excerpts from a true and correct copy of the transcript of an Unemployment Hearing regarding Plaintiff Downing dated July 7, 2004.

18. Annexed hereto as exhibit O-14 collectively are excerpts from a true and correct copy of the transcript of an Unemployment Hearing regarding Plaintiff Downing dated August 4, 2004.

19. Annexed hereto as exhibit O-15 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Downing dated September 17, 2010.

20. Annexed hereto as exhibit O-16 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Harris dated March 3, 2003.

21. Annexed hereto as exhibit O-17 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Harris dated September 8, 2010.

22. Annexed hereto as exhibit O-18 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Hogan dated October 5, 2010.

23. Annexed hereto as exhibit O-19 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Jones dated June 13, 2002.

24. Annexed hereto as exhibit O-20 collectively are excerpts from a true and correct copy of the transcript of a Dept. of Employment and Training hearing regarding Plaintiff Jones dated Dec. 6, 2002.

25. Annexed hereto as exhibit O-21 collectively are excerpts from a true and correct copy of the transcript of a Dept. of Employment and Training hearing regarding Plaintiff Jones dated January 9, 2003.

26. Annexed hereto as exhibit O-22 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Jones dated December 6, 2010.

27. Annexed hereto as exhibit O-23 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Wade dated August 25, 2010.

28. Annexed hereto as exhibit O-24 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Washington dated December 6, 2002.

29. Annexed hereto as exhibit O-25 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Washington dated February 6, 2003.

30. Annexed hereto as exhibit O-26 collectively are excerpts from a true and correct copy of the transcript of a Disciplinary Hearing regarding Plaintiff Washington dated March 3, 2003.

31. Annexed hereto as exhibit O-27 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff Washington dated August 30, 2010.

32. Annexed hereto as exhibit O-28 collectively are excerpts from a true and correct copy of the transcript of a deposition of Plaintiff MAMLEO dated October 7, 2010.

33. Annexed hereto as exhibit O-29 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Beckers.

34. Annexed hereto as exhibit O-30 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Bridgeforth.

35. Annexed hereto as exhibit O-31 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Bristow.

36. Annexed hereto as exhibit O-32 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Couch.

37. Annexed hereto as exhibit O-33 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Downing.

38. Annexed hereto as exhibit O-34 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Harris.

39. Annexed hereto as exhibit O-35 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Hogan.

40. Annexed hereto as exhibit O-36 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Jones.

41. Annexed hereto as exhibit O-37 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Wade.

42. Annexed hereto as exhibit O-38 is a true and correct copy of Independent Drug Test Results documents regarding Plaintiff Washington.

43. Annexed hereto as exhibit O-39 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Beckers.

44. Annexed hereto as exhibit O-40 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Bridgeforth.

45. Annexed hereto as exhibit O-41 is a true and correct copy of an Offer Letter to Plaintiff Bristow.

46. Annexed hereto as exhibit O-42 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Couch.

47. Annexed hereto as exhibit O-43 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Downing.

48. Annexed hereto as exhibit O-44 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Harris.

49. Annexed hereto as exhibit O-45 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Hogan.

50. Annexed hereto as exhibit O-46 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Jones.

51. Annexed hereto as exhibit O-47 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Wade.

52. Annexed hereto as exhibit O-48 collectively are true and correct copies of documents regarding Commendations and Awards for Plaintiff Washington.

53. Annexed hereto as exhibit O-49 is a true and correct copy of a Termination Letter regarding Plaintiff Beckers.

54. Annexed hereto as exhibit O-50 is a true and correct copy of a Termination Letter regarding Plaintiff Bridgeforth.

55. Annexed hereto as exhibit O-51 is a true and correct copy of a Termination Letter regarding Plaintiff Couch.

56. Annexed hereto as exhibit O-52 is a true and correct copy of a Termination Letter regarding Plaintiff Downing.

57. Annexed hereto as exhibit O-53 is a true and correct copy of a Termination Letter regarding Plaintiff Harris.

58. Annexed hereto as exhibit O-54 is a true and correct copy of a Termination Letter regarding Plaintiff Hogan.

59. Annexed hereto as exhibit O-55 is a true and correct copy of a Termination Letter regarding Plaintiff Jones.

60. Annexed hereto as exhibit O-56 is a true and correct copy of a Termination Letter regarding Plaintiff Wade.

61. Annexed hereto as exhibit O-57 is a true and correct copy of a Termination Letter regarding Plaintiff Washington.

62. Annexed hereto as exhibit O-58 collectively are excerpts from a true and correct copy of the transcript of a Rule 30(b)(6) Deposition of Roy Bo Gows dated March 30, 2011.

63. Annexed hereto as exhibit O-59 collectively are excerpts from a true and correct copy of the transcript of a Rule 30(b)(6) Deposition of Dave Juba dated June 1, 2011.

64. Annexed hereto as exhibit O-60 collectively are excerpts from a true and correct copy of the transcript of a Rule 30(b)(6) Deposition of Fredrick Lane dated June 1, 2011.

65. Annexed hereto as exhibit O-61 collectively are excerpts from a true and correct copy of the Transcript of a Deposition of Roberta Mullan, dated January 5, 2007.

66. Annexed hereto as exhibit O-62 collectively are excerpts from a true and correct copy of the transcript of a Deposition of Robert Boyle, dated July 12, 2007.

67. Annexed hereto as exhibit O-63 collectively are excerpts from a true and correct copy of a Rule 111.

68. Annexed hereto as exhibit O-64 is a true and correct copy of an Affidavit of Dr. Christine Moore.

69. Annexed hereto as exhibit O-65 collectively are excerpts from a true and correct copy of the Federal Register, including:

- a. April 11, 1988 (53 FR 11970), and as amended,
- b. June 9, 1994 (59 FR 29908),
- c. November 13, 1998 (63 FR 63483), and
- d. April 13, 2004 (69 FR 19644 - 19732).

70. Annexed hereto as exhibit O-66 is a true and correct copy of a Department of Health and Human Services document titled "Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies, Substance Abuse and Mental Health Services Administration."

71. Annexed hereto as exhibit O-67 collectively are excerpts from a true and correct copy of the transcript of a meeting of Clinical Chemistry and Clinical Toxicology Devices Panel of Food and Drug Administration at Gaithersburg, Maryland on November 14, 2000.

72. Annexed hereto as exhibit O-68 is a true and correct copy of the Expert Report of Leo Kadehjian, dated March 13, 2009.

73. Annexed hereto as exhibit O-69 is a true and correct copy of a 510k Clearance for Cocaine, dated November 6, 2001.

74. Annexed hereto as exhibit O-70 is a true and correct copy of a Letter to Thomas Cairns, Senior Scientist at Psychomedics, from Dr Steven I. Gutman, Director of the FDA Division of Clinical Laboratory Devices, dated November 6, 2001.

75. Annexed hereto as exhibit O-71 is a true and correct copy of the Expert Report of J. Michael Walsh, Ph.D. Submitted by Plaintiffs, dated March 16, 2009.

76. Annexed hereto as exhibit O-72 is a true and correct copy of the Expert Report of Douglas E. Rollins, M.D., Ph.D., dated May 19, 2011.

77. Annexed hereto as exhibit O-73 is a true and correct copy of the Reply of J. Michael Walsh to Rebuttal Report of Leo J. Kadehjian, dated May 7, 2009.

78. Annexed hereto as exhibit O-74 collectively are excerpts from a true and correct copy of a 73 F.R. 71858-71907, titled "Mandatory Guidelines for Federal Workplace Drug Testing Programs," dated November 25, 2008.

79. Annexed hereto as exhibit O-75 collectively are excerpts from a true and correct copy of the transcript of testimony by Roberta Mullan at a hearing before the Civil Service Commission, dated November 3, 2010.

80. Annexed hereto as exhibit O-76 collectively a true and correct copy of the Society of Forensic Toxicologists web page dated November 10, 2011, available at www.soft-tox.org.

81. Annexed hereto as exhibit O-77 collectively are excerpts from a true and correct copy of a SOFT Consensus Opinion Summarizing the Current Applicability of Hair Analysis to Testing for Drugs of Abuse.

82. Annexed hereto as exhibit O-78 collectively are excerpts from a true and correct copy of a Revised SOFT Consensus Statement from 1992.

83. Annexed hereto as exhibit O-79 is a true and correct copy of the journal article, Stout, P.R., Ropero-Miller, J.D., Baylor, M.R. and Mitchell, J.M., External Contamination of Hair with Cocaine: Evaluation of External Cocaine Contamination and Development of Performance-Testing Materials, Journal of Analytical Toxicology, Vol. 30, October 2006, pgs. 490-500.

84. Annexed hereto as exhibit O-80 is a true and correct copy of a document titled "Analysis of Cocaine and Metabolites in Hair, Status as of 2009," created by Donald J. Kippenberger, Deputy Program Manager Forensic Toxicology.

85. Annexed hereto as exhibit O-81 collectively are excerpts from a true and correct copy of the transcript of testimony by Susan Horwitz at a hearing before the Civil Service Commission, dated November 10, 2010.

86. Annexed hereto as exhibit O-82 collectively are excerpts from a true and correct copy of Psychemedics's Standard Operating Procedures, as produced in discovery in this litigation.

87. Annexed hereto as exhibit O-83 collectively are excerpts from a true and correct copy of a Power Point Presentation as referenced by Commissioner Evans during his deposition testimony in this litigation.

88. Annexed hereto as exhibit O-84 collectively are excerpts from a true and correct copy of a Letter to the Editor of the Journal of Analytical Toxicology from laboratory heads Pragst, Sachs, and Kintz, as published in vol. 34 from July/August 2010.

89. Annexed hereto as exhibit O-85 collectively are excerpts from a true and correct copy of the transcript of a Deposition of Benjamin Hoffman, dated November 22, 2010.

90. Annexed hereto as exhibit O-86 collectively are excerpts from a true and correct copy of the transcript of a Deposition of Eleanor R. Gilbert, dated December 21, 2010.

91. Annexed hereto as exhibit O-87 collectively are excerpts from a true and correct copy of the article "Analysis of Cocaine Analytes in Human Hair" (2009) by Ropero-Miller & Stout.

92. Annexed hereto as exhibit O-88 collectively is a true and correct copy of an Affidavit of David Kidwell.

93. Annexed hereto as exhibit O-89 collectively are excerpts from a true and correct copy of the transcript of a deposition of J. Michael Walsh, Ph.D, dated July 14, 2009.

94. Annexed hereto as exhibit O-90 collectively are excerpts from a true and correct copy of the transcript of a Deposition of Sharon Kelly, Ph.D, dated June 24, 2009.

95. Annexed hereto as exhibit O-91 is a true and correct copy of the Expert Report of Sharon Kelly, Ph.D, dated March 16, 2009.

96. Annexed hereto as exhibit O-92 is a true and correct copy of the Rebuttal Report of Sharon Kelly, Ph.D, dated April 14, 2009.

97. Annexed hereto as exhibit O-93 is a true and correct copy of the Reply Report of Sharon Kelly, Ph.D, dated May 5, 2009.

98. Annexed hereto as exhibit O-94 collectively are excerpts from a true and correct copy of the transcript of a deposition of Douglas Rollins, dated July 19, 2011.

99. Annexed hereto as exhibit O-95 collectively are excerpts from the transcript of testimony of Thomas Cairns, Ph.D., D.Sc., in the Matter of the Arbitration Between Boston Police Patrolmen's Association and City of Boston, dated February 25, 2005.


100. Annexed hereto as exhibit O-96 is a true and correct copy of correspondence between Superintendent Creed and Susan Horwitz, dated March 3, 2003, March 4, 2003 and March 5, 2003.

101. Annexed hereto as exhibit O-97 is a true and correct copy of LeBeau & Montgomery [FBI], Letter to the Editor, "Considerations on the Utility of Hair Analysis for Cocaine," Journal of Analytical Toxicology (2009).

102. Annexed hereto as exhibit O-98 collectively are excerpts from true and correct copies of drug testing documentation concerning non-party Preston Thompson.

103. Annexed hereto as exhibit O-99 is a true and correct copy of correspondence from Mary Jo Harris to Plaintiff Bristow, dated April 4, 2003.

I declare under penalty of perjury that the foregoing is true and correct. Executed at
Boston, Massachusetts on November 10, 2011.


Eric Heining

CERTIFICATE OF SERVICE

I, Eric Heining, Esq., hereby certify that a true and correct copy of the foregoing was filed through the ECF System and sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 10, 2011.

/s/ Eric Heining

Eric Heining, Esq.